

AG Contract No.: KR04-0556TRN  
ADOT ECS File No.: JPA 04-025  
Project No.: S-989-A-500  
**TRACS No.: H6160 01C**  
Section: Tangerine Road – 1<sup>st</sup> Avenue  
**BUDGET SOURCE ITEM # 15005**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF ORO VALLEY

THIS AGREEMENT is entered into August 12, 2004 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State and the Town are in mutual agreement for the State to design and construct, a 10' multi-use pathway parallel to Tangerine Road from First Avenue to Oracle Road, narrowing to 8' feet on and over the Big Wash Bridge Eastbound on Tangerine Road as shown in Exhibit A, hereinafter referred to as the "Project". The design and construction will be funded by the State using funds from the Pima Association of Governments (PAG). The Town will contribute additional funding for the multi-use pathway, an amount of Seventy Five Thousand dollars (\$75,000.00) and provide the proper maintenance for the Project.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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NO. 27008  
Filed with the Secretary of State  
Date Filed: 08/12/04

Janice K. Brewer  
Secretary of State

By: Timothy D. Graenewold

## **II. SCOPE OF WORK**

The State Will:

- a. Upon execution of this Agreement, invoice the Town an amount of Seventy Five Thousand dollars (\$75,000.00) for the cost associated with the design and construction of the multi-use pathway.
- b. Provide design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve Town's review comments.
- c. Call for bids award one or more construction contract(s) to accomplish the Project. Administer it and make all payment to the contractor(s). Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.
- d. Grant the Town the necessary encroachment permit to perform all planned maintenance work for the Project.
- e. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this agreement

The Town Will:

- a. Upon execution of this Agreement and upon receipt of an invoice from the State, remit to the State an amount of Seventy Five Thousand dollars (\$75,000.00) for the additional costs associated with the multi-use pathway.
- b. Review the design documents and provide comments.
- c. Obtain the necessary encroachment permit to perform all planned maintenance work for the Project.
- d. Agree to perpetually maintain the multi-use pathway, including the portion on the new Eastbound Big Wash Bridge. Maintenance will consist of keeping the pathway surface and surrounding areas free of all debris, undesirable weeds and grasses, trash and litter. The pathway surfaces will be repaired or replaced as necessary to correct trip hazards, and erosion around the pathway to maintain the final grade at the completion of the Project. Repair or replacement of pathway signage constructed with the Project.
- e. Not make any changes, additions or deletions, to the Project, without written approval of the State. All maintenance work will be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic controls will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".
- f. Agrees to remove the pathway and restore the Project area to the satisfaction of State's right-of-way if in the future the pathway is no longer used. Be responsible for future improvements associated with the multi-use pathway.

## **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this

Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorney's fees.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said Project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the project construction contract, upon thirty-days (30) written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the Town, the State shall in no way be obligated to maintain said Project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511

5. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the Town will bear all costs associated therewith.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 29 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – MD 616E  
Phoenix, AZ 85007

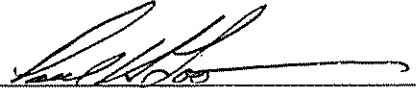
Town of Oro Valley  
Town Manager  
11000 N. La Canada Drive  
Oro Valley, AZ 85737

10. Pursuant with Arizona revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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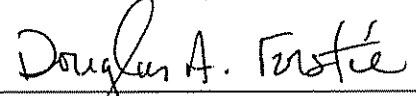
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**TOWN OF ORO VALLEY**

By   
PAUL LOOMIS  
Mayor

**STATE OF ARIZONA**

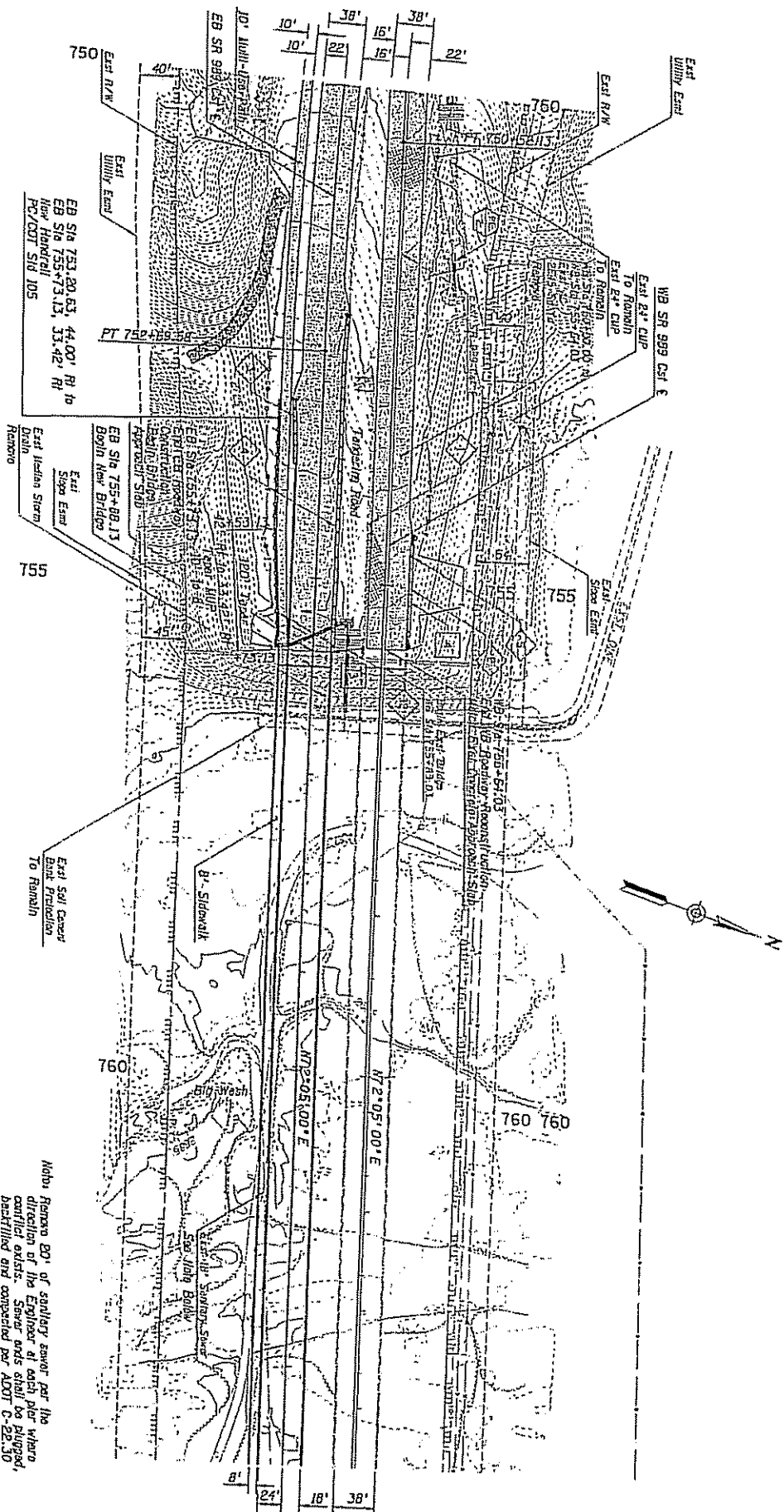
Department of Transportation

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

**ATTEST**

By   
KATHRYN CUVELIER  
Town Clerk





Notes: Remarks EO<sup>1</sup> of sanitary sewer per the direction of the Engineer at each pier where conflict exists. Sewer ends shall be plugged, backfilled and compacted per ADOT C-22.30 prior to bridge pier construction.

**Full Depth Paving Units**

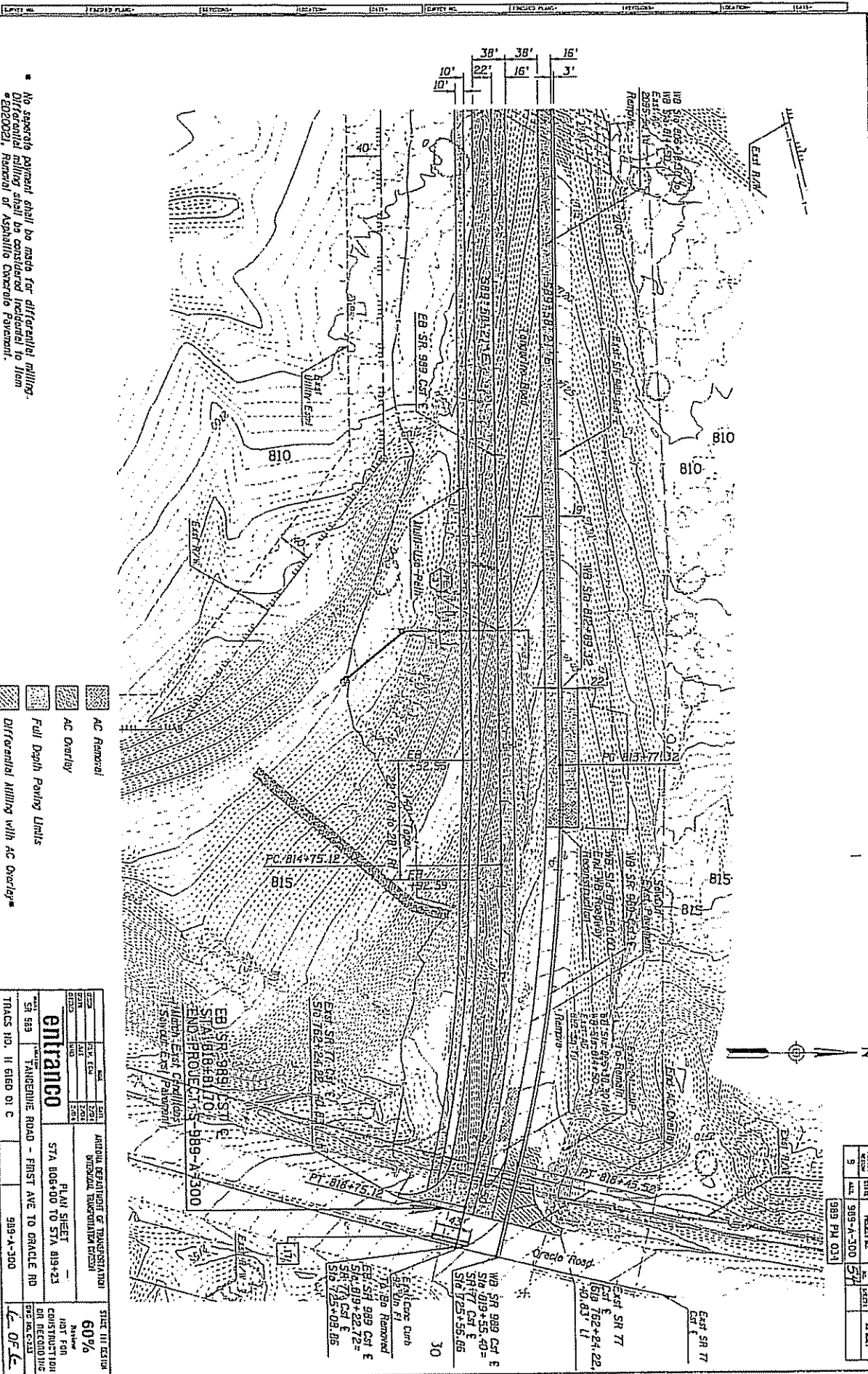
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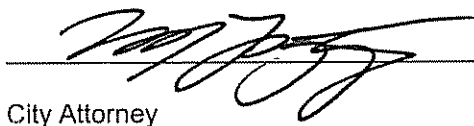


| ITEM   | QTY  | UNIT | AMOUNT |
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| 802022 | 1.00 | 1000 | 1.00   |
| 802023 | 1.00 | 1000 | 1.00   |
| 802024 | 1.00 | 1000 | 1.00   |
| 802025 | 1.00 | 1000 | 1.00   |
| 802026 | 1.00 | 1000 | 1.00   |
| 802027 | 1.00 | 1000 | 1.00   |
| 802028 | 1.00 | 1000 | 1.00   |
| 802029 | 1.00 | 1000 | 1.00   |
| 802030 | 1.00 | 1000 | 1.00   |
| 802031 | 1.00 | 1000 | 1.00   |
| 802032 | 1.00 | 1000 | 1.00   |
| 802033 | 1.00 | 1000 | 1.00   |
| 802034 | 1.00 | 1000 | 1.00   |
| 802035 | 1.00 | 1000 | 1.00   |
| 802036 | 1.00 | 1000 | 1.00   |
| 802037 | 1.00 | 1000 | 1.00   |
| 802038 | 1.00 | 1000 | 1.00   |
| 802039 | 1.00 | 1000 | 1.00   |
| 802040 | 1.00 | 1000 | 1.00   |
| 802041 | 1.00 | 1000 | 1.00   |
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| 802043 | 1.00 | 1000 | 1.00   |
| 802044 | 1.00 | 1000 | 1.00   |
| 802045 | 1.00 | 1000 | 1.00   |
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| 802066 | 1.00 | 1000 | 1.00   |
| 802067 | 1.00 | 1000 | 1.00   |
| 802068 | 1.00 | 1000 | 1.00   |
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| 802071 | 1.00 | 1000 | 1.00   |
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| 802074 | 1.00 | 1000 | 1.00   |
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| 802084 | 1.00 | 1000 | 1.00   |
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| 802086 | 1.00 | 1000 | 1.00   |
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| 802088 | 1.00 | 1000 | 1.00   |
| 802089 | 1.00 | 1000 | 1.00   |
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| 802096 | 1.00 | 1000 | 1.00   |
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| 802100 | 1.00 | 1000 | 1.00   |

APPROVAL OF THE TOWN OF ORO VALLEY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and TOWN OF ORO VALLEY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 18<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
City Attorney

**RESOLUTION NO. (R) 04- 54**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND THE STATE OF ARIZONA FOR PROVIDING ADDITIONAL FUNDING FOR AND THE MAINTENANCE OF THE MULTI-USE PATHWAY ON TANGERINE ROAD FROM FIRST AVENUE TO ORACLE ROAD**

**WHEREAS**, ORO VALLEY is a political subdivision of the State of Arizona, is vested with all the rights, privileges and benefits, and entitled to immunities and exemptions granted municipalities and political subdivisions under the constitution and laws of the state of Arizona and United States; and

**WHEREAS**, providing additional funding and the maintenance for the multi-use pathway on Tangerine Road between First Avenue and Oracle Road is necessary for the public's health, safety and welfare in order to provide for the safe and efficient movement of pedestrians and bicyclist; and

**WHEREAS**, pursuant to Arizona Revised Status, Section 9-240 the Town is empowered to enter into this IGA; and

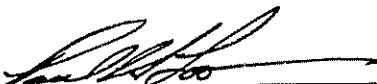
**WHEREAS**, the TOWN COUNCIL deems it necessary in the interest of providing for the health, safety and welfare of the citizens of the TOWN OF ORO VALLEY to enter into an intergovernmental agreement with the State of Arizona to provide additional funding and the maintenance for the multi-use pathway on Tangerine Road between First Avenue and Oracle Road.

**THEREFORE, BE IT RESOLVED, BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA:**

That Mayor is authorized to execute the intergovernmental agreement on behalf of the Town of Oro Valley.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Oro Valley, Arizona this 16<sup>th</sup> day of June, 2004.

**TOWN OF ORO VALLEY, ARIZONA**

  
Paul H. Loomis, Mayor

**ATTEST:**

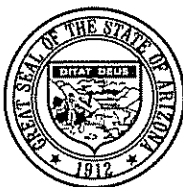
Kathryn E. Cuvelier  
Kathryn E. Cuvelier, Town Clerk

6-17-04  
Date

**APPROVED AS TO FORM:**

Mark Langlitz  
Mark Langlitz, Town Attorney

6/18/04  
Date



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

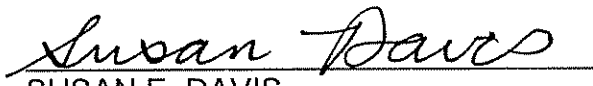
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0556TRN (**JPA 04-025**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 4, 2004

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED/mjf  
Attachment  
858861